

BEFORE THE
PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKET NO. 2018-163-E

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|---|---|-----------------------------------|
| In Re: |) | |
| |) | |
| SolAmerica SC, LLC and Edgefield County |) | |
| S1, LLC, |) | |
| |) | |
| Complainants, |) | |
| |) | ANSWER OF SOUTH CAROLINA |
| vs. |) | ELECTRIC & GAS COMPANY |
| |) | TO COMPLAINT REQUESTING |
| South Carolina Electric & Gas Company |) | MODIFICATION |
| |) | |
| Defendant/Respondent. |) | |
| <hr style="width: 40%; margin-left: 0;"/> |) | |

Pursuant to 10 S.C. Code Ann. Regs. §§ 103-826 and 103-830, and in compliance with the Commission’s Notice dated June 6, 2018, issued by the Chief Clerk and Administrator for the Public Service Commission of South Carolina in the above-referenced docket, the Defendant South Carolina Electric & Gas Company (“SCE&G”), by and through its undersigned counsel, hereby answers the allegations set forth in the Request for Modification, converted to a Complaint by Order of the Public Service Commission of South Carolina (“Complaint”), of solar developer Complainants/Petitioners SolAmerica SC, LLC and Edgefield County S1, LLC, (“Complainants”), as follows:

ANSWER

FOR A FIRST DEFENSE
(Failure to State a Claim)

For the reasons set forth in SCE&G's Motion to Dismiss, filed June 27, 2018, Complainants have failed to set forth a claim against SCE&G, or alleged damages, and their Complaint should be dismissed.

FOR A SECOND DEFENSE
(Response to Allegations of Complaint)

Each and every allegation by the Complainants not hereinafter specifically admitted, modified, qualified or otherwise responded to by SCE&G is hereby denied, and SCE&G demands strict proof thereof. SCE&G answers the Complaint by paragraph numbers which identify the paragraph and statement in the Complaint.

AS TO THE COMPLAINT

1. Answering Paragraph 2, sentence which starts "On April 9, 2018. . .," SCE&G admits upon information and belief that SolAmerica (through Edgefield County S1, LLC) entered into a Power Purchase Agreement ("PPA") with SCE&G.

2. Answering Paragraph 2, sentence which starts "Under the PPA. . .," SCE&G admits upon information and belief that the parties negotiated and agreed to a Completion Deadline of September 23, 2019, for the Project. SCE&G is without information or knowledge sufficient to form a belief regarding the truth of Complainants' claimed reliance on this date in the face of other, previously negotiated Milestones. To the extent Complainants assert reliance on the PPA's Completion Date amending or altering the Milestones as set forth in the Interconnection Agreement, SCE&G denies.

3. Answering Paragraph 2, sentence which starts “SolAmerica (through SolAmerica SC, LLC). . . .,” SCE&G admits SolAmerica negotiated and executed an Interconnection Agreement dated October 4, 2016 (“IA”), with SCE&G and it provides for Interconnection Service, but denies any suggestions or allegations that the references to the IA in the PPA changed the material terms of the IA.

4. Answering Paragraph 2, sentence which starts “As of the date of this Request. . .,” SCE&G admits it would not agree to a second extension of the Milestones until September 23, 2019. To the extent that any remaining allegations contained in Paragraph 2 warrant further response, SCE&G denies same.

5. Answering Paragraph 3, sentence which starts “In addition, SolAmerica. . .,” SCE&G admits that by the terms of the PPA Complainants agreed to post the Development Period Credit Support in the sum of \$450,000.00 by May 9, 2018.

6. Answering Paragraph 3, sentence which starts “SCE&G’s unwillingness. . .,” SCE&G denies. To the extent that any remaining allegations contained in Paragraph 3 warrant further response, SCE&G denies same.

7. Answering Paragraph 4, “Basis for Request,” SCE&G admits that Section 12.12 of the IA allows the Interconnection Customer to make a unilateral filing with the Commission, denies any legal conclusions therein and asserts Section 12.12 must be read in conjunction with Section 6.2 of the IA.

8. Answering Paragraph 4, “Basis for Request,” SCE&G admits that the Commission has the authority to amend, modify, and change any contract as permitted by South Carolina law. To the extent that any remaining allegations contained in Paragraph 4 warrant further response, SCE&G denies same.

9. Answering Paragraph 5, “Background for Request,” SCE&G is without sufficient information and knowledge to admit or deny Complainants’ “understanding” but denies SCE&G agreed to amend the final IA Milestone dates to conform to the September 23, 2019 project completion deadline in the PPA. For clarity, SCE&G would have agreed to align the PPA Commercial Operation date with the final, amended Milestones, but Complainants made no request to do so. To the extent that any remaining allegations contained in Paragraph 5 warrant further response, SCE&G denies same.

10. Answering Paragraph 6, “Background for Request,” SCE&G is without information and knowledge sufficient to form a belief regarding Complainants’ understanding but denies there is a legal basis for such a belief. SCE&G admits it completed or was on schedule to complete all upgrades but has not been able to complete all interconnection facilities due to Complainants’ failure to meet its Milestones. SCE&G admits Complainants paid approximately \$258,000.00 under the IA. SCE&G is without information and knowledge sufficient to form a belief regarding Petitioners’ development costs to date, and therefore such allegations are denied. SCE&G denies that its completion of Milestones assigned to SCE&G is a basis for further extending the Milestones due to Complainants’ failure to perform, or that Petitioners’ Milestone payments and development costs are a basis for further extending the Milestones. To the extent that any remaining allegations contained in Paragraph 6 warrant further response, SCE&G denies same.

11. Answering Paragraph 7, “Problems Caused by SCE&G’s Position,” SCE&G admits that it was not willing to extend the Milestone again beyond December 8, 2018, and denies all further allegations to the extent these are claimed to be “problems caused by SCE&G.”

To the extent that any remaining allegations contained in Paragraph 7 warrant further response, SCE&G denies same.

12. Answering Paragraph 8, “This Request is not due to Lack of Diligence by Requestors,” SCE&G denies that the excuses proffered constitute “due diligence” under the IA or are legal grounds for extending the Milestones. To the extent that any remaining allegations contained in Paragraph 8 warrant further response, SCE&G denies same.

13. Answering Paragraph 9, “The \$450,000.00 Payment,” SCE&G admits that SolAmerica was required to post Development Period Credit Support in the sum of \$450,000.00 by May 9, 2018. SCE&G admits that Complainants failed to post the required Development Period Credit Support. SCE&G denies Complainants’ failure to post is the result of SCE&G’s action or inaction. SCE&G is without sufficient information to admit or deny any claim or fact relating to SolAmerica’s “investor.” To the extent that any remaining allegations contained in Paragraph 9 warrant further response, SCE&G denies same.

14. The remainder of Complainants’ Complaint constitutes a conclusion and reservation of rights not requiring an answer. To the extent any further answer is required, SCE&G denies.

FOR A THIRD DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action before the Commission)

15. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

16. The Complaint fails to state a cause of action. There is no allegation of any act or thing done or omitted to be done by SCE&G which forms the basis for a complaint cognizable under the law or for which this Commission is empowered to grant relief. *See* S.C. Code Ann. § 58-27-1940 (2015).

17. Complainants' Complaint therefore fails to state facts sufficient to constitute a cause of action and, therefore, should be dismissed.

FOR A FOURTH DEFENSE

(Waiver)

18. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

19. Petitioners' claims might be barred by the doctrine of waiver.

FOR A FIFTH DEFENSE

(Reasonableness and Good Faith)

20. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

21. SCE&G's actions were reasonable, were not arbitrary, were not capricious, and were made in good faith. By asserting this defense, SCE&G does not assume the responsibility to meet any burden of proof imposed on a Complainant by statute or common law.

FOR A SIXTH DEFENSE

(Estoppel)

22. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

23. Complainants' claims are barred by the doctrine of estoppel.

FOR A SEVENTH DEFENSE

(Intervening Acts)

24. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

25. Complainants' alleged damages, if any, and SCE&G denies that any damages were suffered, were caused solely by their own acts, representations, omissions, or circumstances

and/or those of third parties as a proximate cause of injuries as alleged, and therefore, SCE&G should not be liable to Complainants in any sum whatsoever.

FOR AN EIGHTH DEFENSE

(Unclean Hands)

26. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

27. Complainants' claims might be barred by the doctrine of unclean hands. Complainants failed to discharge their obligations under the contract and therefore are in breach of contract. Such breach may entitle SCE&G to an award of damages, including reasonable attorneys' fees, under Section 7.2 of the Interconnection Agreement.

FOR A NINTH DEFENSE

(Failure to Mitigate Damages)

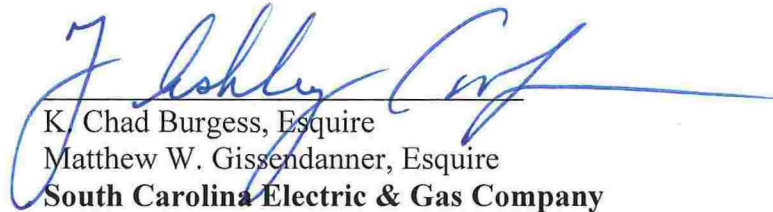
28. The allegations of the foregoing paragraphs are incorporated herein as if repeated verbatim.

29. Complainants failed, in whole or in part, to mitigate their alleged damages.

WHEREFORE, having fully answered Complainants' Complaint, SCE&G prays that the relief sought therein be denied, that the Complaint be dismissed with prejudice, and for such other and further relief as the Commission may deem just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "K. Chad Burgess", is written over a horizontal line.

K. Chad Burgess, Esquire

Matthew W. Gissendanner, Esquire

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***Attorneys for South Carolina Electric &
Gas Company***

Cayce, South Carolina
July 3, 2018

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This is to certify that I have this day caused to be served upon the person(s) named below the *Answer to Complaint Requesting Modification* by electronic mail and/or by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

(via email: rlwhitt@austinrogerspa.com)
Richard L. Whitt
Austin & Rogers, P.A.
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Columbia, South Carolina 29201

(via email: abateman@regstaff.sc.gov)
Andrew M. Bateman
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

This 3 day of July, 2018

